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Attorneys for Plaintiff

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

UNITED STATES OF AMERICA, for the  
use and benefit of OLDCASTLE  
INFRASTRUCTURE, INC., a Washington  
corporation,

Plaintiff,

vs.

TRAVELERS CASUALTY AND SURETY  
COMPANY OF AMERICA, a foreign  
insurance company,

Defendant.

CASE NO. 22-cv-05552

COMPLAINT FOR ACTION AGAINST  
MILLER ACT BOND

Plaintiff, United States of America, for the use and benefit of Oldcastle Infrastructure, Inc. ("Oldcastle" or "plaintiff") hereby alleges, states and claims against defendant Travelers Casualty and Surety Company of America ("Travelers") as follows:

**I. PARTIES**

1. At all times material, Oldcastle was and is a Washington corporation authorized to do business in the State of Washington and has paid all corporate license fees required by law to date.

2. Upon information and belief, defendant Travelers is a foreign insurance company authorized to do business as a surety in the State of Washington with its principal place of business in Hartford, Connecticut.

## II. JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction pursuant to the Miller Act, 40 U.S.C. § 3133(b)(3), and 28 U.S.C. § 1331.

4. The contract out of which the Miller Act claim arises was performed in Randle, Washington, within the county of Lewis. Venue lies in the United States District Court for the Western District of Washington in Tacoma pursuant to 40 U.S.C. § 3133(b)(3)(B), 28 U.S.C. § 1391(b)(2), and Local Civil Rule 3(e)(1).

## III. FACTS

5. The United States Department of Transportation, Federal Highways Administration (the “Government”) awarded a contract to LKE Corporation (“LKE”) for the project known as Cowlitz Valley Road Repairs Phase 2 located at Forest Service Road 29 MP 10.4 in Randle, Washington (Contract #69056718C000023) (the “Project”).

6. Travelers issued a payment bond for the Project (the “Bond”). The Bond provides that LKE is the principal, Travelers is the surety, and the United States is the owner.

7. LKE engaged Oldcastle to provide materials for the Project. Pursuant to the Contract between Oldcastle and LKE, Oldcastle is entitled to recover 18% per annum interest on unpaid invoices and also entitled to recover its attorney’s fees for the collection of unpaid invoices.

8. Pursuant to the request of LKE, Oldcastle supplied materials for the Project for which it has not been paid, and last shipped materials for the Project on August 3, 2021. Oldcastle is owed the principal amount of \$164,865.00 for materials supplied to the Project, together with interest on said sum at the rate of 18% per annum. All of the materials provided by Oldcastle and for which it was not paid, were used for the improvement of the Project.

**IV. CAUSE OF ACTION**  
**(Claim Against Payment Bond Under Miller Act)**

9. Oldcastle re-alleges the foregoing paragraphs as though fully set forth herein.

10. Payment to Oldcastle for materials provided for the Project is secured by the Bond.

11. LKE was the prime contractor for the Project and Oldcastle contracted directly with LKE.

12. Oldcastle is entitled to recovery from the Bond in accordance with the Miller Act (40 U.S.C. § 3133, *et seq.*) in the principal amount of \$164,865.00, or such other sum as proven at trial, plus attorneys' fees, interest, and costs as provided by statute and/or contract.

13. At the time of filing this lawsuit, more than ninety (90) days, but less than one (1) year, have expired from the last date upon which Oldcastle furnished materials to the Project. Oldcastle has satisfied all requirements to pursue a claim against the Bond.

**V. PRAYER FOR RELIEF**

WHEREFORE, Oldcastle makes demand as follows:

A. For judgment against Travelers for the sum of \$164,865.00, together with prejudgment interest, plus its reasonable attorneys' fees and costs and disbursements as allowed by statute and/or contract;

B. For leave to amend this Complaint if necessary; and

C. For such other and further relief as the court shall deem just and equitable.

DATED: August 2, 2022

PETERSON RUSSELL KELLY LIVENGOOD PLLC

By: s/ Kevin B. Hansen

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